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6 **BEFORE THE**  
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **MICHAEL DAVID NICDAO**  
12 **25845 Basil Court**  
13 **Moreno Valley, CA 92553**

14 **Vocational Nurse License No. VN 178807**

15 Respondent.

Case No. VN-2008-2158

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

16 **FINDINGS OF FACT**

17 1. On or about January 12, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N.,  
18 in her official capacity as the Executive Officer of the Board of Vocational Nursing and  
19 Psychiatric Technicians, Department of Consumer Affairs, filed Accusation No. VN-2008-2158  
20 against Michael David Nicdao (Respondent) before the Board of Vocational Nursing and  
21 Psychiatric Technicians. (Accusation attached as Exhibit A.)

22 2. On or about November 8, 1996, the Board of Vocational Nursing and Psychiatric  
23 Technicians (Board) issued Vocational Nurse License No. VN 178807 to Respondent. The  
24 Vocational Nurse License expired on September 30, 2010, and has not been renewed.

25 3. On or about January 12, 2011, Respondent was served by certified and first class mail  
26 copies of Accusation No. VN-2008-2158, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
section 136, is required to be reported and maintained with the Board, which was and is:

1 25845 Basil Court  
2 Moreno Valley, CA 92553

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
5 124.

6 5. On or about January 31, 2011, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "Addressee Unknown."

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
11 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

12 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
14 VN-2008-2158.

15 8. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the  
17 hearing, the agency may take action based upon the respondent's express admissions  
18 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

19 9. Pursuant to its authority under Government Code section 11520, the Board finds  
20 Respondent is in default. The Board will take action without further hearing and, based on the  
21 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
22 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
23 therein on file at the Board's offices regarding the allegations contained in Accusation No. VN-  
24 2008-2158, finds that the charges and allegations in Accusation No. VN-2008-2158, are  
25 separately and severally true and correct by clear and convincing evidence.

26 10. Taking official notice of its own internal records, pursuant to Business and  
27 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
28 and Enforcement is \$985.00 as of February 1, 2011.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Michael David Nicdao has subjected his Vocational Nurse License No. VN 178807 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke Respondent's Vocational Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

a. Respondent has subjected his license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that on or about December 8, 2008, in a criminal proceeding entitled *People of the State of California v. Michael Nicdao*, in San Bernardino County Superior Court, case number TSB803700, Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher, misdemeanors, conduct substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

b. Respondent has subjected his license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that on or about February 17, 2009, in a criminal proceeding entitled *People of the State of California v. Michael David Nicdao*, in Los Angeles County Superior Court, case number 9BF00773, Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section 14601.2, subdivision (a), driving when privilege suspended for prior DUI conviction, misdemeanors, conduct substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

c. Respondent has subjected his license to disciplinary action under section 2878.5, subdivision (b) of the Code, in that on or about September 22, 2008 and February 12, 2009, Respondent twice operated a motor vehicle while under the influence of alcohol, unprofessional conduct that was potentially dangerous or injurious to himself and others.

1 d. Respondent subjected his license to disciplinary action under section 2878.5,  
2 subdivision (b) of the Code for unprofessional conduct in that on or about March 9, 2009,  
3 Respondent was intoxicated in public. Respondent's conduct violated the terms of the probation  
4 imposed in the matter of *People of the State of California v. Michael David Nicdao*, in Los  
5 Angeles County Superior Court, case number 9BF00773, wherein Respondent was ordered to  
6 abstain from the use of all alcoholic beverages for the term of his 48-month probation.

7 e. Respondent has subjected his license to disciplinary action under section  
8 2878.5, subdivision (c) of the Code, for unprofessional conduct, in that on or about December 8,  
9 2008 and February 17, 2009, Respondent was twice convicted of driving under the influence of  
10 alcohol, and Respondent's probation was twice revoked for failure to comply with its terms.


11 **ORDER**

12 IT IS SO ORDERED that Vocational Nurse License No. VN 178807, heretofore issued to  
13 Respondent Michael David Nicdao, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
15 written motion requesting that the Decision be vacated and stating the grounds relied on within  
16 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
17 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on April 21, 2011.

19 It is so ORDERED March 22, 2011

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21   
22 FOR THE BOARD OF VOCATIONAL NURSING AND  
23 PSYCHIATRIC TECHNICIANS  
24 DEPARTMENT OF CONSUMER AFFAIRS  
25

26 DOJ Matter ID: SD2010703354  
27 70432155.doc

28 Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

FILED

JAN 12 2011

Board of Vocational Nursing  
and Psychiatric Technicians

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BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2008-2158

**MICHAEL DAVID NICDAO**  
25845 Basil Court  
Moreno Valley, CA 92553

**A C C U S A T I O N**

**Vocational Nurse License No. VN 178807**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about November 8, 1996, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 178807 to Michael David Nicdao (Respondent). The Vocational Nurse License expired on September 30, 2010, and has not been renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the  
2 following:

3  
4 (f) Conviction of a crime substantially related to the qualifications, functions,  
5 and duties of a licensed vocational nurse, in which event the record of the conviction  
6 shall be conclusive evidence of the conviction.

7 9. Section 2878.5 of the Code states:

8 In addition to other acts constituting unprofessional conduct within the meaning  
9 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
10 a person licensed under this chapter to do any of the following:

11 (b) Use any controlled substance as defined in Division 10 of the Health and  
12 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
13 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
14 any other person, or the public, or to the extent that the use impairs his or her ability  
15 to conduct with safety to the public the practice authorized by his or her license.

16 (c) Be convicted of a criminal offense involving possession of any narcotic or  
17 dangerous drug, or the prescription, consumption, or self-administration of any of the  
18 substances described in subdivisions (a) and (b) of this section, in which event the  
19 record of the conviction is conclusive evidence thereof.

## 20 REGULATORY PROVISIONS

21 10. California Code of Regulations, title 16, section 2521, states:

22 For the purposes of denial, suspension, or revocation of a license pursuant to  
23 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
24 crime or act shall be considered to be substantially related to the qualifications,  
25 functions or duties of a licensed vocational nurse if to a substantial degree it  
26 evidences present or potential unfitness of a licensed vocational nurse to perform the  
27 functions authorized by his license in a manner consistent with the public health,  
28 safety, or welfare. Such crimes or acts shall include but not be limited to those  
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of  
Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or  
abetting the violation of, or conspiring to violate any provision or term of Chapter  
6.5, Division 2 of the Business and Professions Code.



1 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
2 whether a licensed physician or not, in the performance of or arranging for a violation  
3 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
4 Professions Code.

5 (e) Conviction of a crime involving fiscal dishonesty.

6 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
7 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
8 Business and Professions Code.

9 11. California Code of Regulations, Title 16, section 2522 states:

10 When considering a) the denial of a license under Section 480 of the Business  
11 and Professions Code, b) the suspension or revocation of a license on the ground that  
12 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
13 under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
14 the rehabilitation of an individual and his or her present eligibility for a license, will  
15 consider the following criteria:

16 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

17 (2) Actual or potential harm to the public.

18 (3) Actual or potential harm to any patient.

19 (4) Overall disciplinary record.

20 (5) Overall criminal actions taken by any federal, state or local agency or court.

21 (6) Prior warnings on record or prior remediation.

22 (7) Number and/or variety of current violations.

23 (8) Mitigation evidence.

24 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
25 court-ordered probation.

26 (10) Time passed since the act(s) or offense(s) occurred.

27 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
28 Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory  
agencies.

(13) Other rehabilitation evidence.

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1 COST RECOVERY

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (December 8, 2008 Criminal Convictions for DUI on September 22, 2008)

8 13. Respondent has subjected his license to disciplinary action under sections 490 and  
9 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are  
10 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.  
11 The circumstances are as follows:

12 a. On or about December 8, 2008, in a criminal proceeding entitled *People of*  
13 *the State of California v. Michael Nicdao*, in San Bernardino County Superior Court, case number  
14 TSB803700, Respondent was convicted on his plea of guilty of violating Vehicle Code section  
15 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section 23152,  
16 subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher,  
17 misdemeanors.

18 b. As a result of the convictions, on or about December 8, 2008, Respondent  
19 was granted 36 months summary probation, and ordered to comply with standard alcohol  
20 conditions including Term 6 (completion of a four-month first offender alcohol program), and  
21 Term 7 (payment of fines, fees, and restitution in the amount of \$1,595.00). On or about May 12,  
22 2009, a hearing was held and Respondent's probation was revoked for failure to comply with  
23 terms 6 and 7. Respondent failed to appear at the hearing and a bench warrant was issued.

24 c. The facts that led to the conviction are that on or about the evening of  
25 September 22, 2008, a patrol officer with the Colton Police Department observed Respondent  
26 driving in an unsafe manner and conducted a traffic stop. In speaking to Respondent, the officer  
27 noted that his eyes were red and watery and there was an odor of an alcoholic beverage emitting  
28 from his breath. Respondent denied having consumed alcohol. The officer had Respondent exit

1 his vehicle and he was administered a series of field sobriety tests. Respondent provided a breath  
2 sample for the preliminary alcohol screening test, which registered .137 percent blood alcohol  
3 concentration (BAC). Respondent admitted drinking alcohol earlier in the evening. Based on  
4 Respondent's objective symptoms of intoxication, the officer placed Respondent under arrest for  
5 driving under the influence of alcohol. At the Colton Police Department, Respondent provided  
6 two additional breath samples into the Breathalyzer with a reading of .15 percent BAC.

#### 7 SECOND CAUSE FOR DISCIPLINE

8 (February 17, 2009 Criminal Conviction for DUI on February 12, 2009)

9 14. Respondent has subjected his license to disciplinary action under sections 490 and  
10 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are  
11 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.  
12 The circumstances are as follows:

13 a. On or about February 17, 2009, in a criminal proceeding entitled *People of*  
14 *the State of California v. Michael David Nicdao*, in Los Angeles County Superior Court, case  
15 number 9BF00773, Respondent was convicted on his plea of no contest of violating Vehicle Code  
16 section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section  
17 14601.2, subdivision (a), driving when privilege suspended for prior DUI conviction,  
18 misdemeanor. (Respondent admitted a prior DUI conviction as detailed in paragraph 13, above.)  
19 A count of driving while license suspended/revoked (Veh. Code, § 14601.5(a)) was dismissed  
20 pursuant to a plea agreement.

21 b. As a result of the convictions, on or about February 17, 2009, Respondent  
22 was granted 48 months summary probation, and ordered to serve 16 days in the Los Angeles  
23 County Jail (with credit for 10 days). Respondent was further ordered to abstain from the use of  
24 all alcoholic beverages, comply with standard alcohol conditions, pay \$2,144.00 in fines, fees,  
25 and restitution, and complete an alcohol program. Respondent was prohibited from operating a  
26 motor vehicle for one year without an ignition interlock device. At a hearing on or about January  
27 14, 2010, Respondent's probation was revoked and a \$35,000 bench warrant issued after the court  
28 found Respondent failed to comply with payment of fines. At a hearing on November 1, 2010.

1 Respondent's probation was continued on the same terms and conditions. Respondent's fines  
2 were converted to 26 days in the Los Angeles County Jail.

3 c. The facts that led to the conviction are that on or about the evening of February  
4 12, 2009, the Los Angeles County Sheriff's Department responded to a citizen's notification that  
5 a vehicle driven by Respondent was swerving in and out of lanes and was possibly driving under  
6 the influence. Skynight (the Sheriff Department's air unit) responded overhead and observed  
7 Respondent driving northbound on a southbound street at a high rate of speed, continually  
8 changing lanes and weaving through traffic. Skynight followed Respondent until he stopped his  
9 vehicle half in the street and half in a driveway. A Sheriff's Deputy arrived in a patrol car and  
10 contacted Respondent. The Deputy immediately noted the odor of an alcoholic beverage emitting  
11 from Respondent's breath and person. Respondent's eyes were bloodshot and watery.  
12 Respondent admitted he was drunk. The Deputy attempted to conduct several field sobriety tests  
13 and Respondent was belligerent and uncooperative, and refused to answer the questions.  
14 Respondent repeatedly told the Deputy that he was a trauma nurse and warned that if the Deputy  
15 ended up on his table, he (Respondent) would not save him. Respondent could not stand under  
16 his own power without falling down and the Deputy determined that he would not be able to  
17 conduct field sobriety tests. Based on the Deputy's observations of Respondent's objective  
18 symptoms of intoxication, he was arrested for driving under the influence. Upon checking  
19 Respondent's driver's license status, the Deputy discovered Respondent was driving on a  
20 suspended/revoked license. Respondent's vehicle was impounded and he was transported to the  
21 Lakewood substation. Respondent refused to submit to a test of his breath or blood as required  
22 by law.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

3 15. Respondent has subjected his license to disciplinary action under section 2878.5,  
4 subdivision (b) of the Code in that on or about September 22, 2008 and February 12, 2009,  
5 Respondent was under the influence of alcohol in a manner dangerous or injurious to himself and  
6 others, in that he twice operated a motor vehicle on a public roadway in a dangerous manner as  
7 described in paragraphs 13 and 14, above.

8 16. Complainant further alleges that Respondent subjected his license to disciplinary  
9 action under section 2878.5, subdivision (b) of the Code for unprofessional conduct in that on or  
10 about March 9, 2009, a Riverside County Sheriff's Deputy observed Respondent walking in the  
11 middle of the street in Moreno Valley at 3:15 in the morning. Respondent was described as  
12 extremely confused; he was swaying and staggering, he had a strong odor of an alcoholic  
13 beverage on his breath and person, his eyes were bloodshot and watery, and his speech was  
14 slurred. The Deputy felt Respondent was unable to exercise due care for himself and he was  
15 arrested for public intoxication (Pen. Code, § 647(f)). Respondent's actions directly violated the  
16 terms of probation imposed three weeks earlier, on February 17, 2009, in the matter of *People of*  
17 *the State of California v. Michael David Nicdao*, in Los Angeles County Superior Court, case  
18 number 9BF00773, wherein Respondent was ordered to abstain from the use of all alcoholic  
19 beverages for the term of his 48-month probation. (See paragraph 14, above.)

20 FOURTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct - Criminal Convictions Involving the Consumption of Alcohol)

22 17. Respondent has subjected his license to disciplinary action under section 2878.5,  
23 subdivision (c) of the Code in that on or about December 8, 2008 and February 17, 2009,  
24 Respondent was twice convicted of driving under the influence of alcohol. Further, Respondent's  
25 probation was twice revoked for failure to comply with its terms.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 178807, issued to Michael David Nicdao;

2. Ordering Michael David Nicdao to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: January 12, 2011



TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

*Complainant*

SD2010703354